

ORIGINAL
RECEIVED

ORIGINAL
FILE

JAN - 8 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's) GEN Docket No. 90-314
Rules to Establish New Personal) ET Docket No. 92-100
Communications Services)
) RM-7140, RM-7175, RM-7617,
) RM-7618, RM-7760, RM-7782,
) RM-7860, RM-7977, RM-7978,
) RM-7979, RM-7980,
)
) PP-35 through PP-40,
) PP-79 through PP-85

To: The Commission

REPLY COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Raymond G. Bender, Jr.
Michael D. Basile

Its Attorneys

DOW, LOHNES & ALBERTSON
1255 Twenty-third Street, N.W.
Suite 500
Washington, D.C. 20037
(202) 857-2500

January 8, 1993

No. of Copies rec'd. 0711
List A B C D E

TABLE OF CONTENTS

	SUMMARY	ii
I.	PRELIMINARY STATEMENT	1
II.	THE COMMISSION SHOULD NOT AWARD PCS LICENSES ON A NATIONWIDE BASIS	4
III.	THE ONLY MEANS TO ENSURE THAT LECS DO NOT INHIBIT THE DEVELOPMENT OF PCS THROUGH DISCRIMINATORY AND ANTI-COMPETITIVE INTERCONNECTION PRACTICES IS TO PROHIBIT LECS FROM APPLYING FOR OR ACQUIRING PCS LICENSES IN THEIR LOCAL EXCHANGE AREAS	9
IV.	CONCLUSION	12

SUMMARY

Vanguard commends the Commission for its efforts to establish a regulatory framework for PCS that will foster universal service, the rapid deployment of systems, diversity of offerings, and a competitive market environment. Licensing 20 MHz of PCS spectrum to each of five competing providers in the nation's MSA and RSA markets affords the best opportunity for achieving these important goals.

The Commission should not award PCS licenses on a ubiquitous nationwide basis. Nationwide licensing would actually defer universal PCS service, postpone the deployment of systems, deprive the public of a diversity of innovative PCS services, and threaten the creation of a competitive market structure.

Considering the history of abuses by many local exchange carriers ("LECs") regarding cellular interconnection, the Commission should prohibit LECs from applying for or acquiring PCS licenses in their local exchange areas.

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

~~MM~~ - 8 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's) GEN Docket No. 90-314
Rules to Establish New Personal) ET Docket No. 92-100
Communications Services)
) RM-7140, RM-7175, RM-7617,
) RM-7618, RM-7760, RM-7782,
) RM-7860, RM-7977, RM-7978,
) RM-7979, RM-7980,
)
) PP-35 through PP-40,
) PP-79 through PP-85

To: The Commission

REPLY COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits reply comments in connection with the above-referenced Notice of Proposed Rule Making and Tentative Decision regarding the establishment of rules for new Personal Communications Services ("PCS").^{1/}

I. PRELIMINARY STATEMENT

In its initial comments in this proceeding, Vanguard, one of the nation's leading providers of affordable, high-quality cellular communications service, addressed the principal issues raised by the Commission in its PCS Notice. Based on experience gained as an owner and operator of

^{1/} Amendment of the Commission's Rules to Establish New Personal Communications Services, Notice of Proposed Rule Making and Tentative Decision, 7 FCC Rcd 5676 (1992) (the "Notice").

cellular systems in a competitive market environment, and for reasons set forth in its initial comments, Vanguard urges the Commission to structure the regulatory treatment of PCS in consideration of the following factors:

- Maximizing the number of PCS providers in each market will best promote important public interest goals the Commission seeks to achieve -- universal PCS service; rapid deployment of PCS systems; the availability of diverse and innovative services; and a competitive market framework. To ensure these objectives are attained, Vanguard recommends the licensing of five PCS providers in each PCS market area.
- An assignment of 20 MHz of PCS spectrum for each service provider will accommodate anticipated demand and ensure a properly balanced mobile communications market.
- The Commission should adopt a ten-year voluntary negotiation period for the relocation of existing 2 GHz fixed microwave users, followed by an involuntary relocation process that will avoid the disruption or degradation of existing fixed microwave services.
- Licensing PCS on the basis of MSA and RSA market areas will promote universality and prompt delivery of a diverse array of innovative PCS services.
- Given the abysmal record of many local exchange carriers ("LECs") with regard to cellular interconnection, the only means to ensure that LECs do not inhibit the development of PCS through discriminatory and anti-competitive interconnection practices is to prohibit LECs from applying for or acquiring PCS licenses in their local exchange areas.
- The Commission should permit and encourage cellular carriers to hold PCS licenses for markets in which they provide cellular

service except, as noted above, in the case of B block carriers affiliated with a company providing wireline local exchange service in the PCS market.

- The Commission should ensure that there is a level playing field for cellular-PCS competition by creating a common regulatory environment for the two mobile services. This can be achieved by liberalizing the technical requirements for cellular operators; by adopting renewal standards for PCS that parallel those for cellular; and by classifying both cellular and PCS under the same regulatory regime as private or common carriers.
- In the absence of authority to conduct competitive bidding, the Commission should use lotteries to award PCS authorizations.

Many parties to this proceeding submitted comments that are consistent with Vanguard's views as to the regulatory framework that should govern the licensing of PCS. However, a few parties have pressed positions which, in Vanguard's opinion, are contrary to the public interest and fundamentally at odds with the goals the Commission seeks to achieve through the licensing of PCS. Vanguard wishes to address two specific issues in this Reply in order to afford the Commission a more balanced record with regard to PCS licensing.

First, notwithstanding the urgings of a few commenters, awarding ubiquitous nationwide PCS licenses would not serve the public interest. Instead, licensing PCS on the basis of MSA and RSA markets would better achieve the overall objectives the Commission has established for PCS. Second,

since there is demonstrable evidence that many LECs have used their bottleneck landline facilities to thwart the development of cellular, LECs should be precluded from applying for or acquiring PCS licenses in areas where they provide local exchange telephone service. Each of these issues will be discussed in turn.

II. THE COMMISSION SHOULD NOT AWARD PCS LICENSES ON A NATIONWIDE BASIS

A handful of parties urge the Commission to assign PCS licenses on a nationwide scale.^{2/} Like most of the participants in this proceeding, however, Vanguard opposes ubiquitous nationwide licensing of PCS services for sound public interest reasons. The Commission's stated goals for PCS would be better served by licensing PCS on the basis of an MSA/RSA market structure.

The Commission concluded in the PCS Notice that it should attempt to optimize and balance a number of values in providing spectrum and a regulatory framework for PCS: (1) universality; (2) speed of deployment; (3) diversity of services; and (4) competitive delivery.^{3/} Each of these goals is decidedly more attainable through MSA/RSA licensing than through a nationwide licensing scheme.

^{2/} See, e.g., Comments of Bell Atlantic Personal Communications, Inc.

^{3/} Notice at 5679.

Universality and rapid deployment of PCS services will be more readily achieved through an MSA/RSA market structure than by licensing PCS nationwide. The task of installing a ubiquitous nationwide PCS system would be a massive, unprecedented undertaking for even the largest and most resourceful of U.S. telecommunications firms. Indeed, constructing and operating a PCS system on a nationwide scale would involve a logistical nightmare that would defeat, rather than advance, universal PCS and the early implementation of service. As the Commission is aware, many MSA and RSA cellular licensees experienced difficulty and delay in procuring tower sites, negotiating leases, obtaining zoning approvals, meeting construction deadlines and otherwise accomplishing tasks required for cellular operations to commence. These difficulties were experienced by large and small operators alike and were caused by the nature of the tasks required for installing telecommunications facilities over large geographic areas. Such problems will undoubtedly be magnified for PCS systems, which are based on microcell technology, and which will therefore require many more sites than cellular. Given these realities, it is fanciful to suggest that one or more nationwide licensees could muster the resources and manpower required to deploy PCS universally and rapidly on a nationwide scale.

As a practical matter, any single nationwide licensee would, of necessity, focus attention and resources first on constructing large cities and metropolitan areas, in order of size, where financial rewards will be the greatest; only then would it devote efforts to building out smaller cities; eventually it would turn to constructing suburban areas; and ultimately, if at all, it would address the PCS needs of rural America. This process in the hands of one or more nationwide licensees would doubtless take many years to complete. Thus, far from fostering universal PCS and the rapid deployment of services, nationwide licensing would likely forestall the development of PCS considering the daunting task of implementing PCS on a nationwide scale and a compelling desire to focus on large cities and densely populated metropolitan areas.

Unlike a nationwide scheme, licensing PCS on the basis of MSA and RSA markets would foster universality and the rapid deployment of PCS services. No one can deny that the growth and availability of cellular service throughout the United States after only a few short years has been a tremendous success story for the telecommunications industry. Despite early regulatory delay, the Commission's lottery processes have been streamlined over time and undoubtedly will improve further as a result of the current PCS rule making.

Furthermore, as the Commission itself has recognized, smaller market areas would encourage broad participation from a wide range of qualified PCS providers, ensuring the universal availability of PCS. As in cellular, PCS licensees in MSAs and RSAs would quickly build their respective market areas and bring PCS systems on line, not only to meet FCC construction deadlines, but also to gain advantage over competitors. Smaller MSA and RSA market areas would encourage licensees to tailor at least a portion of their services to the communications needs of smaller communities. As noted above, under a nationwide licensing scheme, service to these communities would be delayed or possibly denied as the nationwide licensees focus on the more densely populated areas throughout the country.

The goal of diversity of services would also be better realized by MSA/RSA licensing than by a nationwide plan. Nationwide licensing, of necessity, will limit dramatically the number of PCS service providers that can be accommodated. Consolidating PCS spectrum in a relatively few hands will dampen creativity and innovation and limit the wide assortment of services that are otherwise expected to be provided by PCS. The Commission's experience in granting more than 150 PCS experimental authorizations in the past three years underscores the promising diversity of PCS. As the Commission has recognized, some of the many

services contemplated within PCS include CT-2, CT-2 Plus, CT-3, PCN, Wireless PBX and Wireless Local Loop. The recent pace of technological advances in the telecommunications industry promises that this list will only increase over the next few years. By maximizing the number of PCS service providers overall and on a per market basis, the Commission can help to ensure that new and innovative services will be fully developed and effectively marketed to the American consumer.

Finally, a limited number of ubiquitous nationwide licenses would compromise the goal of competitive delivery. Granting one or more nationwide PCS licenses and a number of regional or local licenses would create an unlevel playing field that would unfairly impede the business development and competitive force of the smaller market licensees. In many ways, the national licensees, by virtue of their size, would possess built-in advantages that would afford them a decided competitive edge over smaller market PCS licensees. The nationwide licensees' greater access to financial resources, personnel, equipment and other benefits could seriously hinder the ability of the smaller market licensees to compete alongside nationwide providers. If the Commission truly favors rigorous competition in PCS, it should refrain from conferring nationwide status on only a few licensees and, instead, the Commission should adopt an

MSA/RSA market framework consisting of five service providers competing on equal footing in each market.

In view of these considerations, Vanguard believes that ubiquitous nationwide licensing would not serve the public interest. The Commission's stated goals for PCS would best be served by licensing PCS on the basis of MSA and RSA markets.

III. THE ONLY MEANS TO ENSURE THAT LECS DO NOT INHIBIT THE DEVELOPMENT OF PCS THROUGH DISCRIMINATORY AND ANTI-COMPETITIVE INTERCONNECTION PRACTICES IS TO PROHIBIT LECS FROM APPLYING FOR OR ACQUIRING PCS LICENSES IN THEIR LOCAL EXCHANGE AREAS

As the Commission properly recognized in the Notice, realizing the full potential of new telecommunications services requires efficient interconnection with the public switched telephone network ("PSTN") at reasonable and non-discriminatory rates.^{4/} This is especially true for a service whose goal is to provide a wide range of convenient, high-quality and affordable communications services to people on the move. To achieve this goal, PCS service providers will need to rely upon the cooperation of LECs to provide interconnection to the PSTN on reasonable terms and at reasonable rates. Unfortunately, since PCS will compete with local exchange telephone service, it is unrealistic to expect LEC cooperation. Indeed, the record on cellular

4/ Notice at 5705.

interconnection demonstrates that many LECs authorized to provide PCS in wireline exchange areas will doubtlessly seek to discriminate against PCS competitors and otherwise thwart or delay the development of a competitive PCS market.

Despite efforts by the FCC to facilitate reasonable cellular interconnection arrangements, the history of cellular interconnection shows that many LECs use their bottleneck control over the PSTN to the detriment of non-wireline carriers. Among other tactics, LECs have refused to provide the type of physical interconnection that is requested; have failed to provide NXX codes or, if provided, have unlawfully imposed recurring charges for their use; have refused to recognize the co-carrier status of cellular companies and, as a result, have not recognized the obligation to negotiate cost-based compensation arrangements; have delayed the provision of interconnection services; have imposed unreasonable technical restrictions; have charged unjustifiably high rates; and have generally refused to negotiate with non-wireline competitors in good faith.

Notwithstanding obligations imposed on LECs to provide reasonable interconnection at cost-based rates, Vanguard's experience is that certain LECs continue to use their bottleneck facilities to thwart competition. This is particularly clear in a case well known to the cellular

industry involving New England Telephone ("NET"). When the non-wireline systems serving the Portland, Maine and Portsmouth, New Hampshire/Maine NECMAs began operations, NET demanded an interconnection charge of 27 cents per minute. Vanguard possesses information indicating that NET's incremental cost for cellular interconnection is 1.2 cents per minute. When the Maine Public Utilities Commission staff intervened, NET agreed to reduce its charge to 11.5 cents per minute pending the parties' execution of a permanent interconnection agreement. Although the Maine PUC staff has urged NET to negotiate a permanent agreement that reflects a cost-based interconnection charge, NET continues to refuse to do so. Vanguard's ongoing interconnection dispute with NET is but one example of the goal of certain LECs to discriminate against non-wireline cellular carriers requiring interconnection to the PSTN. Based on its experience and the experience of other non-wireline cellular carriers, Vanguard believes that any safeguards the Commission might adopt would be inadequate to eliminate these discriminatory and otherwise anti-competitive practices. Consequently, the only means to assure that LECs do not inhibit the development of PCS through discriminatory and otherwise anti-competitive practices is to prohibit LECs

from applying for or acquiring PCS licenses in their local exchange areas.^{5/}

IV. CONCLUSION

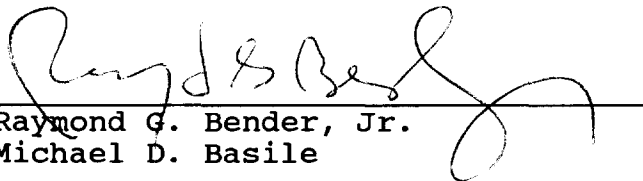
Vanguard applauds the Commission's efforts to establish a regulatory framework for PCS that will ensure universal service, the rapid deployment of PCS systems, a diversity of offerings, and a competitive market environment. As Vanguard has shown in its initial Comments and in this Reply, licensing 20 MHz of PCS spectrum to each of five competing providers in the nation's MSA and RSA markets affords the best opportunity for achieving these important goals. Ubiquitous nationwide licenses should not be awarded because nationwide licensing would actually defer universal service, postpone the deployment of systems, deprive the public of a diversity of innovative services, and threaten the creation of a competitive market structure. In licensing these new services, the Commission should permit and encourage cellular industry participation in all markets or risk losing the significant economies that will be achieved by allowing cellular licensees to establish PCS networks in their cellular market areas. At the same time, the Commission must liberalize its cellular rules to ensure

^{5/} Vanguard does not object to LECs holding PCS licenses in markets in which they do not provide local exchange telephone service.

that cellular carriers are not unfairly disadvantaged in the mobile communications marketplace. Finally, considering the history of abuses by many LECs with regard to cellular interconnection, the Commission should prohibit LECs from applying for or acquiring PCS licenses in their local exchange areas.

Respectfully submitted,

VANGUARD CELLULAR SYSTEMS, INC.



Raymond G. Bender, Jr.
Michael D. Basile

Its Attorneys

DOW, LOHNES & ALBERTSON
1255 Twenty-third Street, N.W.
Suite 500
Washington, D.C. 20037
(202) 857-2500

January 8, 1993